

REMARKS

Claims 1-5 are pending in this application. By this Amendment, claims 1-3 and 5 are amended. No new matter is added by these amendments. Reconsideration of the application based on the above amendments and the following remarks is respectfully requested.

The Office Action, in paragraph 3, rejects claims 1-4 under 35 U.S.C. §112, second paragraph, as being indefinite. Claims 1-3 have been amended to obviate the rejection.

Accordingly, reconsideration and withdrawal of the rejection of claims 1-4 under 35 U.S.C. §112, second paragraph, as being indefinite are respectfully requested.

The Office Action, in paragraph 7, rejects claims 1-5 under 35 U.S.C. §103(a) as being unpatentable over U.S. Patent No. 5,085,832 to Shaw et al. (hereinafter "Shaw") in view of U.S. Patent No. 5,650,122 to Harris et al. (hereinafter "Harris"). Applicants respectfully traverse this rejection.

Shaw discloses a liquid dispensing mechanism for moving a dispensing tip from an aspirating station to a dispensing station (Abstract). The Office Action concedes that Shaw does not teach the employment of a second probe. The Office Action relies on Harris to overcome this deficiency of Shaw, with respect to the subject matter of the pending claims.

Harris discloses an automated sample analysis instrument that washes/aspirates the reaction wells (Abstract). The Office Action fails to make a *prima facie* case of obviousness with respect to (1) the module comprising a wash fluid delivery probe and an aspirator probe and, (2) the aspirator probe being mounted at an angle to vertical and the support being movable at substantially the same angle, as are positively recited in independent claim 1.

MPEP §2142 states, "[t]he Examiner bears the initial burden of factually supporting any *prima facie* conclusion of obviousness." Additionally, §2142 states, "[t]o establish a *prima facie* case of obviousness, three basic criteria must be met. First, there must be some

suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations" (emphasis added). Applicants submit that this standard is not met, as discussed below, and as asserted in the Office Action.

Neither Shaw nor Harris provide any suggestion, or motivation, to combine the references as asserted in the Office Action. Specifically, Shaw teaches a single probe unit, illustrated in Fig. 1, used to first aspirate a liquid at a particular station A, and then to dispense that same liquid at a station B (col. 3, lines 12-15). Shaw is silent regarding a probe wash reservoir as Shaw does not necessitate a washing step, as discussed in the Applicants' disclosure, because Shaw teaches strictly the transfer of a single liquid from station A to a station B.

The apparatus taught by Shaw is (1) unsuitable as a assay washing device, (2) utilizes a single probe for dispensing and aspirating a single liquid, and (3) bases the angle of the single probe not on a design intent of allowing for vigorous cleaning of the elements, but the need to fit over the lower cam shaft (col. 3, lines 34-35). Additionally, Harris is silent regarding the need to mount the aspirator probe at an angle. Therefore, Shaw, in any permissible combination with Harris, cannot reasonably be considered to teach, or even suggest (1) the module comprising a wash fluid delivery probe and an aspirator probe and, (2) the aspirator probe being mounted at an angle to vertical and the support being movable at substantially the same angle. Applicants' intentional angling of the aspirator probe is designed to avoid any risk of contact with the active area and damage to the assay device, as discussed in the pending disclosure in at least paragraph [0029]. Applicants submit that one of ordinary skill in the art, confronted with the same problem as the inventors and with no

knowledge of the claimed invention, would not have selected the various elements from the prior art and combined them in the manner suggested, as the asserted prior art provides no such suggestion or motivation for making such a combination.

Further, Shaw, in any permissible combination with Harris, as enumerated above, is silent regarding any evidence as to support a reasonable expectation of success for making such a combination. Specifically, the applied references are silent regarding any expectation of success that by modifying the device of Shaw with the washing probe as taught by Harris, would in any manner enhance the careful handling of assay devices with minimal manual intervention, as discussed in the Applicants disclosure, nor is there any recognition in Shaw, or Harris, that this issue should be addressed.

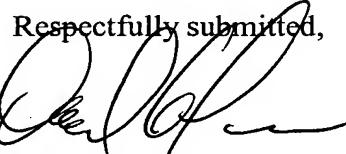
In summary, the Office Action does not support a *prima facie* case of obviousness for at least the reason that any permissible combination of the applied prior art references, as enumerated above, do not teach, nor would they have suggested, all of the claim limitations. Specifically, (1) the module comprising a wash fluid delivery probe and an aspirator probe and, (2) the aspirator probe being mounted at an angle to vertical and the support being movable at substantially the same angle, as are positively recited in independent claim 1, as discussed above.

For at least the above reasons, any permissible combination of Shaw with Harris cannot reasonably be considered to teach, or even to have suggested, the combination of all of the features recited in at least independent claim 1. Further, claims 2-5 are also neither taught, nor would they have been suggested, by the applied prior art references for at least the respective dependence of these claims on allowable independent claim 1, as well as for the separately patentable subject matter that each of these claims recites.

Accordingly, reconsideration and withdrawal of the rejections of the subject matter of claims 1-5 as being unpatentable by any permissible combination of the applied prior art references are respectfully requested.

In view of the foregoing, it is respectfully submitted that this application is in condition for allowance. Favorable reconsideration and prompt allowance of claims 1-5 are earnestly solicited.

Should the Examiner believe that anything further would be desirable in order to place this application in even better condition for allowance, the Examiner is invited to contact the undersigned at the telephone number set forth below.

Respectfully submitted,

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